IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5442 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAGANBHAI NANJIBHAI BAVALIA

Appearance:

1. Special Civil Application No. 5442 of 2001

MR KP RAVAL A.G.P. for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1.0. The petitioner State of Gujarat has preferred this petition against the judgment and award dated 26th August, 1997 in Reference [L.C.S.] No. 211/92 whereby,

the Labour Court, Surendranagar has directed the petitioner to reinstate the respondent-workman with 25% of backwages and also against the order passed in Recovery Application No. 241 of 1999 dated 7th March, 2000, whereby an ex-parte order is passed.

2.0. The short facts as they emerge from the record of the petition are that the respondent-workman was appointed on daily wage basis and his services were required as per the need of the Department. It is the say of the petitioner that the respondent-workman has not completed 240 days, since he was working on daily wage basis. It is further the say of the petitioner that the respondent-workman was dismissed from the service since no work was available.

2.2. In view of that the respondent-workman raised industrial dispute, which was ultimately referred to the Labour Court for adjudication. Before the Labour Court, both the parties adduced evidence. After appreciating the material produced before it, the Labour Court allowed the Reference with the aforesaid directions. Thereafter in pursuance to the said award, the respondent-workman filed Recovery Application No. 241 of 1999 before the Labour Court, Surendranagar under the provisions of Section 33 (C) (2) of the I.D. Act, in view of the fact that the petitioner had not paid 25% backwages which was granted by the Labour Court. The Labour Court after appreciating the material, vide order dated 7th March, 2000 passed an ex-parte order. Hence, this petition.

3.0. I have heard the learned advocate. On going through the record of this petition, it appears that the award was passed on 26th August, 1997 and all throughout, the petitioner had not thought it fit to challenge the same. But after the order dated 7th March, 2000 passed in Recovery Application No.241 of 1999, whereby the Labour Court has directed to pay a sum of Rs.12.202=00 by way of backwages, the petitioner had challenged the award as well as the order passed in Recovery Application. From the award of the Labour Court, it appears that while allowing the Reference, the Labour Court had considered the fact that the respondent-workman was working with the petitioner for more than a year. Further, in para 8 of the judgment, since, no documentary evidence was produced against the respondent-workman, the Labour Court has not accepted the contention with regard to non completion of 240 days. Therefore, in my view no error is committed by the Labour Court.

3.1. In the result, the petition is dismissed. Rule is

discharged with no order as to costs. Interim relief if any, stands vacated.

[K.S. JHAVERI, J.]

/phalguni/